



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Syscon Services, Inc.

File: B-235647

Date: September 21, 1989

DIGEST

1. Agency reasonably found an offeror did not demonstrate understanding of agency requirements in responding to sample tasks that could be ordered, as set forth in request for proposals, where the offeror was twice apprised of which task responses were unacceptable and the offeror's protest of the evaluation constitutes a mere disagreement with the agency evaluation.

2. Disparities in evaluation ratings among technical evaluators do not establish an award decision was not rationally based in view of the potential for disparate subjective judgments of different evaluators on the relative strengths and weaknesses of technical proposals.

3. Where a protester received an unacceptable rating on the most important evaluation criterion of four criteria listed in the request for proposals in relative order of importance, and acceptable ratings on the other three criteria, the overall unacceptable rating awarded the protester did not give inordinate weight to that most important criterion.

4. An agency satisfies requirement for meaningful discussions where it twice advises the protester of which responses to sample tasks, requested by request for proposals to evaluate the offerors' understanding of the government's requirements, were unacceptable and affords the protester the opportunity to revise its proposal. Since the offeror's understanding was being tested by its responses to the sample tasks, the agency need not specify all deficiencies in each sample task response because this may defeat the purpose of that evaluation criterion.

DECISION

Syscon Services, Inc., protests the award of a contract to Information Spectrum, Inc. (ISI), by the Naval Air Systems

Command under request for proposals (RFP) No. N00019-88-R-0053 for integrated logistics support services.

We deny the protest.

The RFP solicited technical and cost proposals for an indefinite quantity, task order, fixed labor rate, time and materials contract for 1 year of support services with four evaluated option years. The RFP stated that technical and cost factors were of equal importance and listed the technical evaluation factors in descending order of importance as follows:

1. Technical Approach--Sample Tasks
2. Personnel
3. Management Plan/Manpower Utilization Matrix
4. Corporate Experience

The evaluation plan provided for and defined ratings of "outstanding," "better," "acceptable," "marginal," and "not acceptable" to be used in the evaluation.

The primary focus of this protest involves the first and most important evaluation criterion, under which offerors were requested to respond to 16 sample tasks, which were representative of the type of work that could be assigned under the contract. In this regard, the RFP instructed offerors:

"For each sample task, the offeror will provide: (1) a description of possible areas to be investigated in researching each task, (2) a detailed description of the technical approach and methodology which would be used in accomplishing each task, (3) identification of the additional information that would be required to perform each task, (4) a detailed work plan for implementation, (5) a product outline describing what would be the expected deliverable(s) or a result of this task, and (6) manhours by labor category but not cost. The offeror should not propose studies in response to the sample tasks but rather a detailed technical report addressing methodologies/recommendations that meet sample task requirements. . . ."

This aspect of proposals was to be evaluated:

"to determine the extent of the offeror's understanding of the government's requirements. The special issues and problems associated with the performance of each sample task must be addressed clearly and completely in response to [the proposal instructions]."

Three proposals, including those of Syscon and ISI, were submitted in response to the RFP and all were included in the competitive range. After one round of written discussions and revised proposals, a second round of written discussions was followed by a request for best and final offers (BAFOs) from the three offerors.

Syscon was rated "not acceptable" for the sample task criterion after the evaluation of its initial proposal, as well as its revised proposal/BAFO, because of numerous evaluated deficiencies in its sample task responses. In this regard, 14 of the 16 Syscon responses in the initial and revised proposals were found "not acceptable," and, in Syscon's BAFO, 12 of the 16 sample task responses were found "not acceptable." Although Syscon was rated "acceptable" for the other three technical criteria, its "not acceptable" rating on the most important criterion resulted in an overall technical rating of "not acceptable."

On the other hand, ISI was rated "better" overall after the initial, revised and BAFO evaluations. ISI was selected for award since it submitted the only technically acceptable proposal and because its evaluated price of \$122,121,292 for 5 years was less than 1 percent higher than Syscon's lowest evaluated price of \$121,114,620.

Syscon was provided an extensive debriefing, where most of its evaluated deficiencies were identified. In addition, pursuant to its request under section 21.3(c) and (d) of our Bid Protest Regulations, 4 C.F.R. §§ 21.3(c) and (d) (1989), Syscon was provided with all of the documentation relating to the evaluation of its proposal, except the worksheets of the individual evaluators.

Syscon protests that the evaluation of its task order responses was arbitrary and irrational. Syscon alleges its responses were unfairly penalized for failing to consider items not required by the RFP and for not addressing matters that it in fact addressed. In support of its contentions, Syscon provided a detailed response to each of the sample task deficiencies identified by the Navy during the debriefing. Syscon also contends that the evaluators'

ratings were not based on objective standards, as evidenced by the differing ratings the various evaluators gave the sample task responses on the initial evaluation. Indeed, Syscon points out that most of these evaluators rated many of Syscon's sample task responses "marginal" or better, rather than "not acceptable."

We will examine an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83; Fairfield Mach. Co., Inc., B-228015, B228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. However, the protester has the burden of affirmatively proving its case and mere disagreement with a technical evaluation does not satisfy this requirement. Id.

In this case, we find the protester's detailed critique of the numerous deficiencies found in the sample task response evaluation and defense of its proposal constitutes a mere disagreement with the technical evaluation and does not show the determination that Syscon's "not acceptable" rating for this criterion was unreasonable. Although the RFP makes apparent that the Navy's primary interest in obtaining the sample task responses was to determine to what extent the offerors understood the Navy's requirements, the record shows that Syscon's sample task responses did not indicate the requisite understanding, despite its being twice advised which of its sample task responses were not acceptable.

For example, on sample task No. 1, which, among other things, required the contractor to identify and describe the potential use of data bases and analytical tools available for identifying a particular problem involving a "weapons replaceable assembly" component of an avionics system, one of the deficiencies which the Navy found was that the excessive amount of time in Syscon's response to this task indicated that Syscon did not understand the time urgency of this task. Although Syscon claims the sample task did not state it was urgent, we again stress that the purpose of evaluating sample task responses was to ascertain offeror understanding of the Navy's requirements. Based on our review, Syscon's failure to recognize the time urgency of isolating this problem involving the readiness of an avionics system could reasonably be found by the Navy to evidence a failure to understand the Navy's requirements.

On sample task No. 2, which, among other things, required the contractor to perform a life cycle cost/readiness benefits analysis on a specified scenario, one identified deficiency, disputed by Syscon, was its alleged failure to identify certain relevant data bases. Syscon points out

where in its proposal it mentioned these data bases. However, we find reasonable the Navy's response that Syscon did not discuss the utilization of these data bases in sufficient detail to demonstrate its understanding of how these data bases would be used.

The rest of the numerous evaluated deficiencies in the sample tasks are in a similar vein and have been disputed by Syscon. Although we will not discuss each of these identified deficiencies, we cannot, based on our review, find unreasonable the Navy's determination that the vast majority of Syscon's sample task responses were unacceptable. In this regard, we note that Syscon was twice apprised during discussions of which sample task responses were not acceptable, yet it still failed to improve its proposal in any significant way.

Syscon has pointed out instances where some evaluators rated Syscon's responses to sample tasks as "acceptable" or "better" in the initial evaluation, but the consensus rating was found "not acceptable" on those tasks. Syscon claims this shows the evaluating must not have been based on objective criteria, and that Syscon's proposal was unreasonably evaluated.

The record indicates that the various evaluators independently evaluated each sample task response and the chairman of the evaluation committee for this aspect of the evaluation discussed the rationale with each evaluator for each rating to arrive at a consensus committee rating for each sample task response.

It is not unusual for individual evaluators to have disparate, subjective judgments on the relative strengths and weaknesses of a technical proposal. Mounts Eng'g, 65 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358; Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222; Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. Consequently, disparities in evaluator ratings, such as existed here, does not establish the award decision was not rationally based. Id. Moreover, there is nothing improper in the evaluators' discussion of proposals' relative strengths and weaknesses and their opinions of how the proposal should be rated to arrive at a consensus rating. In any case, the differences among the evaluators on the initial evaluation is not particularly pertinent in the present case, where Syscon was twice afforded, and took advantage of, the opportunity to revise its unacceptable sample task responses, and the evaluators, with general unanimity, found 12 of Syscon's 16 BAFO responses were unacceptable.

Syscon argues the sample task evaluation was given inordinate weight in the award selection; that its "not acceptable" rating for sample tasks should not have caused its technical proposal to be rated "not acceptable"; and that it should therefore have received the award as the low priced offeror. Syscon claims that merely listing this criterion as the most important of four technical criteria, listed in descending order of importance, would not indicate that a "not unacceptable" rating for this criterion would mandate an overall "not acceptable" technical rating, where, as here, the other factors are rated "acceptable."

Syscon's argument that the sample task evaluation was given inordinate weight has no merit. We have consistently recognized that listing technical factors in descending order of importance is sufficient to apprise offerors of their relative importance, which is all that is required. Technical Servs. Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152; Textron-Diehl Track Co., B-230608; B-230609, July 16, 1988, 88-2 CPD ¶ 12. It is clear that under this RFP an overwhelming "not acceptable" rating in the primary technical evaluation area, supported by the fact that 12 of the 16 sample task responses were found "not acceptable," is sufficient to support an overall "not acceptable" technical rating. See Raytheon Support Servs. Co., B-219389.2, Oct. 31, 1985, 85-2 CPD ¶ 495.

Syscon claims that the discussions were not meaningful, primarily because the Navy did not specify why its task order responses were not acceptable, even though this was the primary basis its proposal was rated "not acceptable."

In the present case, the record shows that 14 of Syscon's initial sample task responses were either marginal or not acceptable. In the first round of discussions, the Navy advised Syscon in writing of which of these responses were not acceptable or marginal, and advised Syscon to "please submit a detailed analysis of these tasks to clearly and completely demonstrate your depth of knowledge and understanding of the government's requirements."

Upon evaluation of the revised proposals, the responses to these 14 sample tasks were still found to be marginal or not acceptable. In the request for BAFOs, the Navy advised Syscon of this determination and that resubmittal of these sample tasks was required. The Navy further advised:

"Sample task responses should be specific.
Identify in your response why, how, where, etc.
. . . . Your resubmission must provide a

detailed analysis of these tasks to clearly and completely demonstrate your depth of knowledge and understanding of the government's requirements."

Additionally, the Navy provided Syscon with an example of deficiencies on one of the deficient sample task responses. The Navy did not otherwise during discussions provide Syscon with the specific sample tasks deficiencies.

As indicated above, notwithstanding the foregoing discussions, Syscon's BAFO responses on the 12 of the sample tasks were found unacceptable. Syscon complains that the discussions on the sample tasks were not meaningful because "all" deficiencies in the individual sample task responses were not identified.

We have consistently stated that in order for discussions on a negotiated procurement to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to the areas in their proposals which are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy the government's requirements. Pan Am World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. However, the content and extent of discussions is a matter of the contracting officer's judgment based on the particular facts of the procurement. Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency describes deficiencies in such detail that there could be no doubt as to their identity and nature, but whether the agency imparted sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. Id.; Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. There is not, as is suggested by Syscon, a requirement that agencies conduct all-encompassing discussions; rather, agencies are only required to reasonably lead offerors into those areas of their proposals needing amplification, given the context of the procurement. Eagan, McAllister Assocs., Inc., B-231983, supra, at 5.

Here, the sole purpose of evaluating offerors' responses to the sample tasks was not to assess the sufficiency of the offerors' technical approach per se, but, as expressly stated in the RFP and repeatedly emphasized during discussions, to evaluate the offerors' understanding of the government's requirements. As indicated above, the RFP made

clear what information was to be submitted to test the offerors' understanding. If the Navy had simply spoon fed Syscon each of the noted deficiencies for every sample task, it may have led Syscon to simply repeat back the Navy's concerns point by point, which would defeat the primary purpose of the sample task scenario--to test the offerors' demonstrated understanding of the technical requirements of the contemplated contract. Eagan, McAllister Assocs., Inc., B-231983, supra. That is, if such extensive discussions were conducted, the agency would be provided with no assurance that the offeror independently appreciated the problems identified by the agency. Fairchild-Weston Sys., Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394. Consequently, we find that where an offeror's understanding is being tested, as opposed to evaluating the adequacy of its technical approach to the contract work, the agency need not specify during discussions all identified deficiencies. Eagan, McAllister Assocs., Inc., B-231983, supra; see also Hill's Capitol Sec., Inc., B-233411, Mar. 15, 1989, 89-1 CPD ¶ 274 at 6; Fairchild-Weston Sys., Inc., B-229568.2, supra.

Based on the foregoing, we find the Navy satisfied its duty to conduct meaningful discussions by identifying Syscon's unacceptable sample task responses, with an example of the type of deficiencies that existed in the responses, and by providing Syscon with adequate time and opportunity to correct these responses.

In a similar vein, Syscon claims that the Navy did not satisfy its obligation to conduct meaningful discussions for the personnel evaluation area. However, the record shows that in each round of discussions, the Navy advised Syscon and all other offerors of all unacceptable and marginal resumes. Given the RFP's detailed listing of job descriptions, education and work experience, this was sufficient to lead Syscon into areas of its personnel proposal needing change or amplification. tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. Moreover, Syscon was not prejudiced even assuming the Navy discussions in this area were somehow deficient, since Syscon's personnel proposal was ultimately found acceptable and since Syscon's proposal was unacceptable overall because of its sample task responses. Id.


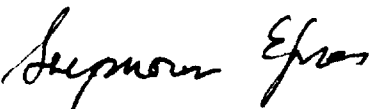
Syscon speculates that improper price discussions may have been held with ISI, but not the other offerors, because ISI significantly lowered its proposed price in its BAFO. However, not only does ISI deny any such communication was made, but the record contains no indication that ISI was in any way advised of the relative prices of the offerors or urged to lower its price. Indeed, the only discussions with

the offerors was in writing. Moreover, ISI's BAFO documents the reasons for lowering its prices.

Finally, Syscon claims that ISI has an unfair competitive advantage, since one of its subcontractors participated in developing a revised version of the Life Cycle Logistic Process Specifications (LCLPS), which was the subject matter of Sample Task No. 8 of the RFP. Under that sample task, the contractor was to provide a management plan on how to implement the revised LCLPS. Syscon was downgraded for its response to this task by failing to address standardization, warranties, and acquisition streamlining procedures. Syscon claims that these deficiencies resulted from its failure to have access to the revised LCLPS that was being developed by ISI's subcontractor and that ISI thus had an unfair competitive advantage.

The Navy and ISI claim the LCLPS is readily available and that Syscon does not claim it attempted to obtain a revised LCLPS. The Navy also notes that standardization, warranties and acquisition streamlining have been widely available Department of Defense-wide initiatives for many years. Moreover, sample task No. 8 stressed that standardization was a primary goal in updating the LCLPS. Consequently, we find Syscon's failure to give adequate emphasis to this matter in its sample task response could be found to evidence a lack of understanding of the Navy's requirements and that it therefore was not competitively prejudiced by ISI's subcontractor's access to the revised LCLPS. In this regard, the Air Force states that the subcontractor did not write, but only assembled, the revised LCLPS. Moreover, even assuming ISI had some competitive advantage by virtue of its subcontractor's work on the LCLPS, Syscon was also not prejudiced since its proposal would still be considered not acceptable, even assuming this sample task response was not considered, because it still would be not acceptable for 11 of the 16 sample task responses.

The protest is denied.



James F. Hinchman
General Counsel